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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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HENLEY III, RAYMOND J

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/031,922	GAYED, ATEF	
	<b>Examiner</b>	<b>Art Unit</b>	
	Raymond J. Henley III	1614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 10-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 10-15, 18-28 and 42-44 is/are allowed.
- 6) ☒ Claim(s) 16, 29, 31-34, 37-41 and 45-53 is/are rejected.
- 7) ☒ Claim(s) 17, 30, 35 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- |                                                                                              |                                                                             |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**CLAIMS 1-7 AND 10-53 ARE PRESENTED FOR EXAMINATION**

Applicant's Amendment filed October 23, 2003 has been received and entered into the application. Accordingly, claims 8-9 have been canceled, an Abstract has been added and claims 30, 32, 35, 36, 40, 41 and 52 have been amended. At page 12 of the Amendment, applicant indicates that a claim numbered as 53 has been amended. However, insofar as only claims 1-52 were originally presented for examination, the presentation of claim 53 is taken to be an addition of claim 53.

In light of applicant's remarks in their Amendment, the objection of the claims as set forth in the previous Office action dated July 18, 2003 at page 2 is withdrawn.

***Claim Rejection - 35 USC § 103***

Claims 16, 29, 31-34, 37-41 and 45-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bergamini et al., (U.S. Patent No. 5,597,560), already of record, for the reasons of record as set forth in the previous Office action at pages 2-4, as applied to claims 16, 29-41 and 45-52.

Applicant's arguments have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

In particular, applicant has argued that Bergamini et al. does not teach or suggest the "surprising synergistic effects" of combining benzethonium chloride and phenoxyethanal as discussed in the present application.

The Examiner has reviewed those portions of the specification referred to by applicant in his remarks. However, the specification only contains speculative statements regarding the

effect of synergy. It has not been demonstrated on the record that applicant's combination of preservatives produces any results that would not have been expected by the skilled artisan in light of the prior art teachings. Applicant's arguments cannot take the place of such evidence.

Also, even if synergy were to be shown, there is nothing in the present claims that relates to such a concept. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., synergy or specific combinations/ratios of ingredients for which synergy has been demonstrated) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Accordingly, for the above reasons, the Examiner deems the above claims properly rejected.

#### ***Claim Objection***

Claims 17, 30, 35 and 36 are objected to as depending from a rejected base claim, but are otherwise in condition for allowance.

#### ***Allowable Subject Matter***

Claims 1-7, 10-15, 18-28 and 42-44 are in condition for allowance for the reasons of record as set forth in the previous Office action as applied to claims 1, 2 and 42-44.


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is 703-308-4652. The examiner can normally be reached on M-F, 8:30 am to 4:00 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on 703-308-4725. The fax phone number for the organization where this application or proceeding is assigned is 703-308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
Raymond J. Henley III  
Primary Examiner  
Art Unit 1614

Nov. 17, 2003